

# **State of Maine Judicial Branch Advisory Committee on Judicial Ethics**

**Type:** Standing Committee

**Re-established:** January 1, 2010

**Amended:** May 6, 2019

**Chair:** Judge James Martemucci

## **I. Committee and Membership**

- A. **Composition.** The Supreme Judicial Court shall appoint an Advisory Committee on Judicial Ethics consisting of seven members, as follows: three members shall be a justice of the Superior Court or judge of the District Court; one member shall be a Family Law Magistrate; one member shall be a judge of the Probate Court; one member shall be an attorney licensed by the Board of Overseers of the Bar; and one member shall be a member of the public. The specific membership names shall be listed in a separate membership roster.
- B. **Terms of Appointment.** Of the members first appointed, three shall be appointed for three years, two shall be appointed for two years, and two shall be appointed for one year. On the expiration of the term of office of a member, a successor shall be appointed for a term of three years. Members may be reappointed to the Committee, when such reappointment is appropriate. Members shall continue to serve until a successor is appointed, and appointments to fill a vacancy shall be for the balance of the existing term. The Chief Justice may terminate or suspend an appointment for good cause as determined by the Chief Justice.

## **II. Powers and Duties**

The Committee shall have the power and duty to:

- A. Render formal and informal advisory opinions with respect to the interpretation of rules of court relating to the ethical and professional conduct of justices, judges, active retired justices and judges, family law magistrates, and nominees or candidates for judicial office (hereinafter collectively referred to as judicial officials), persons subject to the direction and control of judicial officials, persons over whom judicial officials exercise supervisory responsibility, and the spouse or relative of a judicial official.
- B. Make recommendations to the Supreme Judicial Court regarding amendments to the Maine Code of Judicial Conduct.
- C. Submit to the Supreme Judicial Court in January of each year a report of its activities during the prior calendar year, together with any recommendations.

## **III. Administration**

The Chief Justice shall designate one of the members of the Committee as Chairperson and another as Vice Chairperson. The Chairperson and Vice Chairperson shall be designated from among the Superior Court and District Court members of the Committee.

- A. A quorum of the Committee shall consist of five members. The Committee may, in its discretion, deliberate and prepare its opinions in person, by telephonic or video conference, and/or by other forms of communication, including email.
- B. The Committee may render advisory opinions only by an affirmative vote of a majority of the members voting.
- C. The Clerk of the Supreme Judicial Court is designated as Secretary to the Committee. The Secretary shall maintain a record of all requests for formal advisory opinions and the Committee's responses thereto, and shall be responsible for distribution of the Committee's opinions.
- D. Meetings of the Committee shall be held at the call of the Chairperson.
- E. The members of the Committee shall serve without compensation.
- F. The Vice Chairperson may act in the place of the Chairperson whenever the Chairperson is not available to act.

#### **IV. Opinion Requests**

- A. A request for a formal or informal advisory opinion may be made only by a judicial official and shall be submitted to the Secretary or the Committee's Chairperson, as indicated below.
- B. The Committee shall not render opinions regarding the ethical responsibilities of someone other than the person submitting the request, except that the Committee may respond to a request from a judicial official about (1) a person subject to a judicial official's direction and control; (2) a person over whom a judicial official exercises supervisory responsibilities; or (3) a judicial official's spouse or relatives.
- C. The Committee shall only issue opinions that address contemplated or proposed future conduct and shall not issue opinions addressing past or current conduct unless the past or current conduct relates to future conduct or is continuing. The Committee shall not render opinions on issues pending before another court, agency, or commission, other than the court where the judicial official making the inquiry presides, including issues pending before the Committee on Judicial Responsibility and Disability.
- D. Formal Advisory Opinions. Requests for formal advisory opinions shall be made by a letter addressed to the Secretary of the Committee. The letter shall be signed by the judicial official requesting the advice and shall set forth fully all facts bearing on the question or questions for which he or she requests advice. It shall also contain a concise statement of the question or questions of judicial ethics for which the opinion is being sought, with reference to the relevant sections of the Code of Judicial Conduct.
- E. Affirmation. The request for a formal advisory opinion shall contain an affirmation that, to the best of the information and belief of the judicial official requesting the opinion, (1) no issue raised thereby, whether in reference to the requesting judicial

official or to any other person, is presently pending before another court, agency, or commission other than the court, agency, or commission where the judicial official making the inquiry presides, and (2) if the issue relates to past or current conduct, such conduct also relates to future or continuing conduct. The judicial official shall immediately notify the Secretary of the Committee if the subject matter of the request, subsequent to filing the request, becomes the subject matter of a proceeding before another court, agency, or commission other than the court where the judicial official making the inquiry presides.

- F. **Informal Advisory Opinions.** Informal advisory opinions shall be rendered only in the event of an urgent or unexpected occurrence requiring immediate advice or action. Requests for informal advisory opinions shall be made in person, by telephone or by e-mail to the Chairperson or, in his or her absence, the Vice Chairperson of the Committee. The request shall contain the same information required for a formal advisory opinion and there shall be the same ongoing duty to inform if the subject of the request becomes the subject of matter of a proceeding before another court, agency or commission, other than the court where the judicial official making the inquiry presides. A judicial official communicating a request for an informal advisory opinion is deemed to have represented, by virtue of having made the request, that to the best of the judicial official's information and belief no issue raised by the request, whether in reference to the requesting judicial official or to any other person, is presently pending before another court, agency, or commission, other than the court where the judicial official making the inquiry presides, and if the issue relates to past or current conduct, such conduct also relates to future or continuing conduct.

A judicial official who has requested an informal opinion may, at any time, request a formal opinion concerning the subject matter of the informal opinion by submitting a request in writing that complies with the requirements of section 4(D) and (E), above.

The Committee may communicate its informal opinion to the judicial official orally or in writing. The Chairperson of the Committee shall maintain a sequentially numbered record, by calendar year, of requests for informal opinions and a summary of the responses thereto, but shall not include or record the name of the requesting judicial official or any personally identifiable information concerning that judicial official. The record shall be included in the Committee's annual report to the Supreme Judicial Court.

## **V. Scope of Question**

Advisory opinion requests must relate to the interpretation of rules of court relating to the ethical and professional conduct of (1) the requesting judicial official; (2) someone subject to the requesting judicial official's direction and control; (3) someone over whom the requesting judicial official exercises supervisory responsibility; or (4) a spouse or relative of the requesting judicial official. The Committee has discretion to decline to answer questions for any reason including those seeking opinions on hypothetical questions or

upon questions relating to the conduct of persons other than the requesting judicial official, but no such request is precluded by this policy.

## **VI. Consideration of Requests**

The Committee shall render formal and informal advisory opinions with respect to the interpretation of rules of court relating to the ethical and professional conduct of judicial officials, persons subject to their direction and control, persons over whom they exercise supervisory responsibility, or the spouse or relative of a judicial official. The Committee may decline to render an opinion for any reason that it deems sufficient and shall have discretion to decline to respond to a request for an informal advisory opinion and to suggest that the request be submitted in writing as a request for a formal opinion. The Committee may request additional information for purposes of clarification prior to rendering an opinion.

## **VII. Publication of Formal Advisory Opinions**

The Committee's formal advisory opinions shall be published on the Judicial Branch website, but the name of the judicial official requesting the opinion and any identifying information shall not be included in a published opinion unless the judicial official consents to such inclusion.

## **VIII. Disclosure of Requests and Opinions**

Except to the extent that formal advisory opinions are published on the Judicial Branch website pursuant to paragraph 7, all requests for advice made to the Committee under this rule, and all the Committee's proceedings thereon, shall be strictly confidential unless disclosure is required by court order or unless the Committee determines by majority vote of all members that disclosure is necessary to prevent or remedy a serious injury to a person, property, or the administration of justice.

## **IX. Effect of Opinions**

- A. All opinions shall be advisory in nature only. No opinion shall be binding on the judicial official who submitted the request, the Committee on Judicial Responsibility or Disability, or any court.
- B. A judicial official who has requested and received a formal or informal advisory opinion of the Committee shall not be immune from disciplinary action for conduct in reliance on that opinion, but reliance on and compliance with a formal advisory opinion shall be given substantial weight in evaluating the judicial official's conduct in subsequent disciplinary proceedings arising from such conduct. Reliance on and compliance with an informal advisory opinion is a factor properly to be taken into consideration in subsequent disciplinary proceedings arising from such conduct.
- C. Formal advisory opinions of the Committee may be received in evidence and considered on questions involving the interpretation of the Maine Code of Judicial

Conduct in any proceeding in the courts of this state or before the Committee on Judicial Responsibility and Disability.

## **X. Reconsideration**

Within fifteen days after the distribution of a formal advisory opinion, the person who requested a formal advisory opinion may petition the Committee to reconsider its opinion by submitting a request for reconsideration to the Secretary to the Committee in the form of a letter or memorandum explaining the basis for the request. The Committee shall respond to the request by either reaffirming or revising the formal opinion. If warranted, the Committee may reconsider an opinion at any time on its own motion.

**Dated:** May 6, 2019

For the Court: Leigh I. Saufley, Chief Justice

DONALD G. ALEXANDER  
ANDREW M. MEAD\_  
ELLEN A. GORMAN  
JOSEPH M. JABAR  
JEFFREY L. HJELM  
THOMAS E. HUMPHREY  
Associate Justices